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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Replacement of Part 90 by)
Part 88 to Revise the Private)
Land Mobile Radio Services)
and Modify the Policies)
Governing Them)

and)

PR Docket No. 92-235

Examination of Exclusivity)
and Frequency Assignment)
Policies of the Private)
Land Mobile Radio Services)

To: The Commission

**COMMENTS OF AFFILIATED AMERICAN RAILROADS
ON PETITIONS FOR RECONSIDERATION**

The Affiliated American Railroads, by their undersigned counsel, hereby submit their Comments on certain petitions for reconsideration filed in response to the Second Report and Order^{1/} in the above-captioned proceeding. The Affiliated American Railroads limit their Comments to those petitions which address the geographic restrictions placed on candidates for trunking and those which suggest that fees charged by frequency coordinators for coordination of frequencies in protected services such as

1/ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of the Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, Second Report and Order, slip op. (released March 12, 1997) ("Second R & O").

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the Railroad Radio Service be capped due to concerns regarding monopoly power of these frequency coordinators.

I. THE COMMISSION SHOULD REPLACE ITS CURRENT 70 MILE PROTECTION REQUIREMENT WITH A DESIRED-TO-UNDESIRED CONTOUR PROTECTION RATIO

In the Second R & Q the Commission proposed that candidates for trunking must obtain the consent of all co-channel and adjacent channel licensees whose service areas intersect a circle defined by a radius of 70 miles from the base station operated by the trunking candidate.^{2/} This proposal was opposed by several petitioners who argued that the requirement is too rigid, cumbersome and would not reflect the characteristics of actual trunked systems.^{3/} The railroads agree with these petitioners on these points. Instead of a mileage protection approach, the railroads favor the adoption of a desired to undesired contour protection ratio which was proposed by several petitioners. Such an approach would allow more flexibility and greater efficiencies in the development of trunked systems. The railroads submit, however, that the exact contour protection ratio should not be decided by the Commission until further analysis and modeling has been conducted to determine the actual operative characteristics of trunked systems at these frequencies. As noted below, the railroads suggest that the Telecommunications Industry Association ("TIA") is the most appropriate entity to conduct such analysis.

^{2/} Second R & Q, ¶ 58.

^{3/} See Petition for Clarification and/or Reconsideration of the Industrial Telecommunications Association, Inc. ("ITA") at 6; Petition for Reconsideration of the American Mobile Telecommunications Association, Inc. ("AMTA") at 10; Petition for Partial Reconsideration and Request for Clarification of Kenwood Communications Corporation ("Kenwood") at 6.

Petitioners have proposed several different contour protection ratio requirements for trunking operations. The Industrial Telecommunications Association, Inc. ("ITA") proposes that a trunking candidate be required to obtain the concurrence of all co-channel licensees whose interference contour (19 dBu for the 150-174 MHz band or 21 dBu for the 421-512 MHz band) overlaps the trunking candidate's service contour (37 dBu for the 150-174 MHz band or 39 dBu for the 421-512 MHz band) and all co-channel licensees whose service contour overlaps the trunking candidate's interference contour (19 dBu for the 150-174 MHz band or 21 MHz for the 421-512 MHz band).^{4/} The American Mobile Telecommunications Association, Inc. ("AMTA") recommends that the Commission "require parties in the 450-512 MHz bands to obtain consent from incumbents whose actual 39 dBu service area contour is overlapped by the 22 dBu interference contour of the proposed station."^{5/} Kenwood Communications Corporation states that the required consent area should be reduced and that the trunking candidate should only be required to obtain the consent of co-channel and adjacent channel systems whose 37 or 39 dBu service contour overlaps the proposed trunked station's 22 dBu contour.^{6/} The Manufacturers Radio Frequency Advisory Committee, Inc. ("MRFAC") states that concurrences should be required "only from co- and adjacent channel licensees whose service contours (37 dBu in the case of VHF and 39 dBu in the

4/ Petition for Clarification and/or Reconsideration of ITA at 7.

5/ Petition for Reconsideration of AMTA at 11.

6/ Petition for Partial Reconsideration and Request for Clarification of Kenwood at 10.

case of UHF) overlap a prescribed interference contour of the trunking applicant."^{7/} Ericsson, Inc. argues that the 70 mile trunking concurrence mileage requirement is too restrictive and should be changed to no more than 55 miles.^{8/}

It is clear that there is support in the record generally for the revision of the proposed trunking concurrence requirements. However, in light of the differing proposals, as summarized above, the Commission should not adopt specific contour protection limits at this time. Rather, the appropriate course would be for the manufacturer and user communities to conduct propagation modeling and interference studies taking into account the characteristics of newly developing trunked systems operating in these frequency bands. These studies should be conducted under the auspices of the TIA, the entity with the most appropriate expertise to develop protection criteria. The results of these studies should then be submitted in a report to the Commission and the user community for appropriate comment prior to the adoption of the criteria.

II. THERE IS NO NEED TO CAP THE COORDINATION FEES OF COORDINATORS OF THE PROTECTED SERVICES AS THESE FEES ARE CURRENTLY LIMITED TO THE COSTS OF PROVIDING COORDINATION AND PARTIES ARE FREE TO FILE COMPLAINTS WITH THE COMMISSION

Small Business in Telecommunications (SBT) recommends that the Commission impose a cap on the fees charged by coordinators of the protected frequencies, including the Railroad Radio Service frequencies. SBT argues that because the coordinators of the protected service frequencies are not subject to competition from other coordinators,

^{7/} Petition for Reconsideration of the Manufacturers Radio Frequency Advisory Committee, Inc. ("MRFAC") at 4.

^{8/} Petition for Reconsideration by Ericsson, Inc. at 3.

"there is a substantial risk that persons whose frequency choice restricts them to a certain coordinator will have to pay fees which are unreasonably high."^{9/}

The Commission should reject SBT's proposal to impose a cap on fees charged by coordinators of the protected frequencies. The railroad industry is confident that the railroad frequency coordinator, the Association of American Railroads ("AAR"), will not charge unreasonable fees for coordination requests. In accommodating any coordination request, AAR's primary task is to ensure that the critical safety uses of these frequencies by the railroads are protected. The AAR will charge non-railroad applicants on the same basis that it charges its member railroads for frequency coordinations so that there will be no discrimination between railroad and non-railroad applicants. Moreover, the Commission long ago addressed and resolved the fee concerns raised by SBT when it adopted the current frequency coordination system:

45. . . . [I]f necessary, the coordination fees of each coordinator will be reviewed by the Commission only to ensure that they reasonably reflect the cost of providing overall coordination service. . . . Complaints regarding coordination fees may be filed with us. If a coordinator abuses these standards on fees, we will move appropriately to replace that entity with some other coordinating body.

46. We believe that this approach achieves an appropriate balancing of the various fee-related issues by providing coordinators the needed flexibility to allow for differences in the cost of coordinating frequencies in the various radio services involved, while addressing concerns about monopoly pricing.^{10/}

9/ Petition for Reconsideration of Small Business in Telecommunications ("SBT") at 10.

10/ Application, Filing Application, Processing of Frequency Coordination Frequency Management, Private Land Mobile Services, PR Docket No. 83-737, Report and Order, 103 FCC 2d 1093 (1986) (emphasis added).

Thus, fees charged by coordinators must reflect the costs of providing the coordination service, and any person is entitled to file a complaint against a coordinator alleging excessive or unreasonable fees. The Commission should continue to employ this well-reasoned, time-tested system rather than taking the dramatic and unnecessary step of imposing a cap on the coordination fees of any frequency coordinator.

IV. CONCLUSION

For the foregoing reasons, the railroads urge the Commission to rule on the Petitions for Reconsideration in a manner that is consistent with the views set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tina Harris, hereby certify that the foregoing "Comments of the Affiliated American Railroads on Petitions for Reconsideration" was served by first-class mail, postage prepaid, this 19th day of June, 1997 on the following persons:

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